**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

Before the
Federal Communications Commission
Washington D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Accelerating Wireless Broadband Deployment by | ) | WT Docket No. 17-79 |
| Removing Barriers to Infrastructure Investment | ) | |

September 5, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12 Street NW
Washington, DC 20554

These comments are submitted by the Blue Lake Rancheria, California to the Federal Communications Commission in the matter of the Notice of Proposed Rulemaking and Notice of Inquiry on "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment," WC Docket No. 17-79.

A hard copy of these comments below was hand-delivered to the FCC at the Tribal Consultation in this matter held in Flagstaff, Arizona on August 22, 2017.

Sincerely,

/s/

Arla Ramsey
Vice Chairperson

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

August 22, 2017

**Re: Blue Lake Rancheria Comments to the Federal Communications Commission (FCC), at the FCC's Tribal Consultation on: "[I]ssues addressed in the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79, August 22, 2017, 2:00 PM to 5:00 PM at 22181 Resort Blvd., Flagstaff, AZ 86004.**

Chairman Pai, other FCC representatives, and Colleagues gathered here today:

Thank you for convening this important consultation.

On behalf of the Blue Lake Rancheria ("Tribe"), I am making these comments on issues addressed in the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* and I request they be entered into the formal record.

As stated in the email invitation by the conveners, the short notice of this consultation was 'not ideal,' and the NPRM/NOI is more than 100 pages. Further, the initial comment period which began in late April coincided with simultaneous requests for comments issued throughout the federal administration on literally hundreds of matters that have significant impact for tribes. These topics include but are certainly not limited to, Environmental Protection Agency regulation rollbacks and reform, offshore oil and gas drilling on the continental shelf, and the administration's focus on changes to the Indian Reorganization Act, among many, many others.

Due to current burdens on tribes to respond to high-importance, simultaneous requests for comments, and the large volume of material in the FCC NPRM/NOI, the Tribe requests certain sub-topics be considered under separate, additional consultation: Process Reforms, NEPA Process, Pole Replacements, Rights of Way, and Collocations – particularly the discussion of local government approvals replacing the need for certain types of tribal and historic preservation review, which the Tribe finds completely unacceptable.

The content of the NPRM/NOI is heavily-weighted to the concerns of developers. There is very little discussion of the concerns of tribes. The Tribe suggests supplemental NOPR/NOI or RFI to obtain in-depth information on tribal needs related to broadband infrastructure.

Due to the extraordinary effort by tribes and others here today to give comments in person, and in the interest ensuring there is time for everyone here to speak, the Tribe requests any written and/or verbal comments from today's consultation be entered into the formal record as a part of the initial comment period, and not *ex parte*, if the attendee requests it. The Tribe makes such a request, and we understand it to be granted.

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

**Background on Broadband Need**

According to the "2015 Broadband Progress Report,"[1] 85 percent of residents of rural Tribal lands – such as the Blue Lake Rancheria – lack access to reliable broadband, at speeds required to conduct government, education, lifeline sector, economic, and other core activities. By comparison, only 17 percent of the U.S. as a whole lack this access.

Far northern California is remote, sparsely populated, and tenuously connected to the 'outside world' in almost every meaningful way – power lines, natural gas lines, roads, air service, and certainly communications, broadband, and internet access.

In Humboldt County, where Blue Lake Rancheria is located, 62 percent of the total population (urban and rural) lack access to broadband, and 86 percent lack broadband access in rural sections.[2]

Access to the internet, fulfilled in large part by broadband infrastructure, is now a basic necessity for all governments, educational institutions, emergency responders, businesses and enterprises, and households. Internet access and information from the internet is now as essential as electricity in terms of supporting the majority of human activities in the U.S.

**General Comments**

Tribes are impacted by – and economically involved in – broadband development. In addition to cultural and historic preservation concerns, some tribes are developing broadband-based economic enterprises, and taking control of broadband infrastructure with their own telecom utilities. Broadband infrastructure of course also supports other tribal economic enterprises.

Broadband-based internet access is a necessity within our daily lives – our jobs, education, health, banking and finance, public safety, and other uses rely on it. As such, it is a utility, in the same way we view electricity and water as utilities. A regulated approach to broadband utility is firmly in the public interest.

The FCC's stated barriers to broadband access include but are not limited to: 'volume of siting and permitting applications, varying siting geographic and demographic differences, differences in local law, and the many challenges of cost, complexity, and time faced by siting applicants, vetting and managing the wide array of possible contracting broadband vendors.' All these barriers could be confidently minimized and streamlined with a utility regulation approach.

[1] https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report
[2] Appendix E - Appendix E – Americans Without Access to Fixed Broadband by County

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

Utilities are regulated through commissions and other oversight entities tasked with ensuring equitable, quality, affordable delivery. Utility regulators are experienced in policy, incentive, and revenue frameworks that ensure the utility service is provided equitably, affordably and of adequate quality to all citizens for public benefit and in the public interest. And good regulation ensures that the utilities themselves have a business model that ensures long-term reliability. Broadband services fit perfectly into this utility structure.

A utility framework applied to broadband ensures the public – and especially disadvantaged populations such as most tribal communities – are not 'held hostage' by private broadband service providers in terms of the cost of adequate, minimum broadband access, especially in rural areas. As one local example, FirstNet is becoming our region's 911 system. FirstNet is using AT&T's platform, and there is no redundancy, which is needed, and which would be possible and economically feasible if we had adequate broadband access. The current costs are such that we are facing paying a fee for 911 calls, which is unacceptable.

Net neutrality – the equitable, affordable access to internet service and information on the internet – is crucial to a fully-functional broadband-based internet service. The internet should not be a pay-for-play access model for many reasons, but primarily because it places disadvantaged populations at an *even greater disadvantage*, and further widens the digital divide. The Tribe urges the FCC in the strongest terms to preserve and protect net neutrality.

In rural, remote, mountainous areas such as ours, broadband companies often use utility right-of-ways for their infrastructure, because it is the only viable route. The aligning of current utility infrastructure and collocation placements with new broadband is often the most cost-effective construction path, which further supports folding broadband into utility regulation.

With respect to broadband capacity, the FCC's updated broadband benchmark speeds - 25 megabits per second for downloads and 3 megabits per second for uploads – as minimum capacity are adequate and should be kept. The Tribe agrees with Chairman Pai's descriptions of multiple members of a household increasingly needing simultaneous access to high speed broadband. However, respectfully, Chairman Pai's comments describing this benchmark as 'too high' do not contemplate the full suite of existing and rapidly emerging digital needs of households, including robust home-based businesses, online education and research, tele-medicine, high-definition video conferencing, 5G networks, and other high-capacity uses and needs by multiple members of a household.

Regarding Commissioner O'Reilly's comments in his statement "…about the delays and expense of seeking the necessary local permitting and tribal approvals. … Many localities and tribes are, undoubtedly, acting in good faith, and I thank them for their cooperation in approving the deployments necessary to provide Americans with the wireless services they demand, but bad actors are ruining it for everyone. Infrastructure siting is not a means to increase revenues; and delaying application reviews, imposing de facto moratoria, preventing densification and upgrades of networks, among other tactics, is not acceptable." [Underline emphasis added.]

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

Commissioner O'Reilly omits specifics about who the "bad actors" are, but the Tribe would like to speak to these general concerns with the following.

- Tribes have a long history of non-tribal interests exploiting their lands and resources for profit.

- Specifically, outside entities have repeatedly sought low-cost access to tribal lands and resources to be able to reduce their up-front development and deployment costs, and in most cases the profits from these lower cost developments are not shared with the Tribe.

- The Tribe agrees that ***utility*** infrastructure siting should not be a means to increase revenues, because the purpose of basic utilities is to provide critical services deemed in the public interest at an affordable cost to everyone.

- However, it is a plain fact that private, for-profit broadband developers are absolutely using infrastructure siting to increase ***their*** revenues. So, it is a far more complex situation than Commissioner O'Reilly's comments would suggest when a private developer seeks long term use of tribal lands and/or resources for their own specific profitable purposes.

- Where for-profit entities control broadband infrastructure, and the use of that infrastructure must be purchased by a Tribal Government and end-users on tribal lands, it is fitting that infrastructure siting across tribal lands would be at a cost, to at the very least cover the administrative, legal, historic and environmental review, opportunity, and other costs to a tribe. Perpetual use of land and resources which could be used for other purposes by a Tribe comes at a price.

- Tribes (and likely other types of jurisdictions) are already experiencing sly telecom right-of-way intrusions into existing frameworks such as utility easements.
    - For example, the Blue Lake Rancheria Tribe was recently working in good faith to update an easement for a single gas line, and without discussion or notice, the updated easement presented to the Tribe included new and unrelated language about a blanket telecom right-of-way. Had it not been caught and deleted by the Tribe, this would have resulted in significant legal issues if the easement were exercised. This approach is not acceptable.

- Tribes are also increasingly interested in developing broadband-supported economic enterprises, and telecom utilities on Tribal Lands to benefit their disadvantaged communities and create jobs. In those cases, the access to tribal lands for purposes of broadband infrastructure could be conducted to create multiple co-benefits for the Tribe and for the developing entity. More detailed discussions with the industry to explore those opportunities would be welcome.

- Many tribes in California have been proactive with the FCC (most recently, meetings held in December 2016) and both the FCC and tribes have worked in collaboration to address broadband development issues,

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

including fees and consultations such as those under Section 106. In those discussions, the FCC reiterated its role as lead agency with respect to Section 106 consultations, and as a member of the federal government agency family, the FCC has a specific trust responsibility to make decisions for the benefit of tribes.

**Specific Comments on NRPM/NOI Sub-topics**

Regarding streamlining state and local review, the Tribe offers these comments on specific FCC requests:

- "Deemed Granted Remedy" The Tribe opposes a "deemed granted" remedy.
  - Speaking as a relatively small, resource constrained government, it is prejudicial against capacity-constrained jurisdictions to implement a "deemed granted" remedy, as the jurisdiction(s)' missed deadlines may be due to the complications with a specific site, or permit request, or scope, or timeline for review.
  - Tribal Council meetings and other forums for public review typically happen according to a set schedule that cannot be accelerated.
  - The deemed granted remedy absolutely favors the permit applicant over the jurisdiction(s)' ability to "take into account the nature and scope of [a] request," and to "consider the specific facts of individual applications."
  - If the "deemed granted" remedy is adopted (over the Tribe's objections), then the timeline after which an application is deemed granted should be a minimum of six months (180 days) from the time of constructive receipt of the application by a tribe. This will help (but not ensure) capacity-constrained jurisdictions have a "reasonable" amount of time to "take into account the nature and scope of [a] request," and to "consider the specific facts of individual applications."
- "Irrebuttable Presumption" The Tribe opposes an "Irrebuttable Presumption" adoption.
  - Given that law and regulation already strongly support jurisdictional approval of most wireless applications, (please see Section 6409(a) of the Spectrum Act, among other authorities listed in the NPRM/NOI), it would be an over-reach by the FCC to effectively over-ride jurisdiction(s)' and Court(s)' ability and responsibility to craft remedies on a case-specific basis.
- With all due respect, the statement in the NPRM/NOI (page 6), that, "the Commission is well-positioned to take into account the "nature and scope" of particular categories of applications in determining the maximum reasonable amount of time for localities to address each type [of application]" is an over-confident position. Local jurisdictions are unquestionably better positioned than the FCC to understand the nature and scope of a local infrastructure project.
- "Lapse of State and Local Governments' Authority" The Tribe does not agree that where a locality has failed to meet a timeline on a particular application that it forfeits its authority over any decisions regarding that request, and that "at that point no local land-use regulator would have the authority to approve or deny the application."

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

        - Further, the Tribe opposes the FCC's suggestion that in those circumstances "there is no need for an applicant to seek such approval."
        - A missed timeline cannot remove or relieve jurisdictional authority and the responsibilities of a locality from a development process, and it is unclear where authorities and responsibilities *and related liabilities* would revert to: the FCC?
    - Section 253, Section 332(c)(7), or other provisions of the act do not give the FCC the authority to promulgate a "deemed granted" rule. Courts and jurisdictions cannot be removed by the FCC from adjudication of the application process.
- Tribes in California have worked collaboratively with the State and the FCC to build one of the most efficient, cost effective notification and consultation systems in the U.S., with clearly defined areas of concern, geographic areas of interest, and points of contact. The result is a more predictable, cost efficient consultation process for Section 106 and other activities.
- The NPRM/NOI primarily lists several cases where for-profit entities are complaining about increases in fees, stating fees "have become prohibitive and are unnecessarily diverting capital from deployment." To this the Tribe has the following comments:
    - The fee structure is and will be unique to each Tribal Nation.
    - The Section 106 review process and resultant costs will be unique to the nature and scope of each project. However, much can be done to streamline and predict the steps and costs. Discussing a fee schedule for certain review steps is worth considering under a separate consultation and/or NPRM/NOI effort.
    - The suggestion in the PTA-FLA memo that fees for Section 106 review and consultation by a tribe be curtailed within $50-$200 per project is flatly untenable.
        - To ensure proper identification and protection of archeological sites, cultural resources, and other historic and property findings, tribes use in-house or outsourced professionals - archaeologists and other specialists, including Tribal Historic Preservation Officers, to conduct Section 106 consultations, typically in conjunction with attorney review.
        - As such, a simple review reasonably begins at several hundred dollars and can increase exponentially depending upon the scope, complexity, and sensitivity of the area under consideration.
        - Whether or not an applicant "requests information" from a Tribe is immaterial to the Tribe's responsibilities for review, and should not be a threshold to determine whether payment to a Tribal Nation for services is warranted.
    - The Tribe supports clarity and predictability in fees paid to Tribal Nations, so that developers and tribes can plan their budgets accordingly.
    - It is irrelevant that fees 'have exceeded the costs of erecting a tower' – the two are not in any way correlated, except as a part of a larger development cost.

**BLUE LAKE RANCHERIA**
P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

**www.bluelakerancheria-nsn.gov**

- The Tribe would support discussion of aligning NEPA, NHPA, Section 106, local permitting, and other processes such that they could be conducted simultaneously with one core information package. It will be necessary to diverge on certain specific considerations and mitigations, but a common starting point is worth pursuing.
- The Tribe supports the FCC's continuation of facilitated meetings between tribes and industry stakeholders, and state historic preservation offices, as these discussions have been very productive.

**Conclusion**

Broadband infrastructure is now a basic need, it is a utility. Once installed, broadband infrastructure will be in place for many decades, perhaps generations, into the future, so it is important to get it right.

As a federal agency, the FCC's trust responsibilities to tribes must be prioritized over the needs of private, for-profit developers.

We hope these comments will provide a basis for more comprehensive thinking on these important issues, and we urge the FCC to conduct the follow-on consultations as requested.